Ram Phal
v.
Braham Parkash and others

Dua, J.

neither the criminal Court from which the case had been called nor the complainant nor the learned Tribunal seem to have cared to advert to the fact that this complaint had virtually been stayed indefinitely because the record of this case had been summoned in the Tribunal. The machinery of criminal Courts, in my opinion, is not intended to be utilised for any ulterior purposes except for the purpose of bringing the guilty person to trial. In the present case, it appears to me that in all probability the complaint was used as a handy machinery merely for securing the search warrants and getting hold of certain documents which may prove helpful in the trial of this election Petition. This, in my view, is hardly a proper and fair use of the machinery of criminal justice. It is lamentable that even the learned Tribunal did not pay proper attention to the question as to for how long the record of the criminal case was necessary to be kept in the Tribunal so that it may not remain there for any unncessary and avoidable length of time. But since there is nothing that can be effectively done now, I need not pursue this matter any further.

For the reasons given above, this appeal fails and is hereby dismissed with costs which we fix at Rs. 300.

BISHAN NARAIN, J.—I agree.

K.S.K.

APPELLATE CIVIL.

Before Tek Chand and P. C. Pandit, JJ.

HIRA LAL AND ANOTHER,—*Appellants.*

versus

STATE OF PUNJAB,—*Respondent.*

Regular First Appeal No. 132 of 1954

P. C. Pandit J.

1960

Sept. 27th

Fatal Accidents Act (XIII of 1855)—Section 1-A—Scope of—Determination of quantum of damages—Principles as to stated—Proof that the deceased was actually

earning income—Whether necessary—Damages in respect of the death of a child—Whether can be granted.

Held, (per P. C. Pandit, J.)

(1) That under section 1-A of the Fatal Accidents Act, the Court has been given a discretion to allow such damages as it thinks proportionate to the loss resulting from such death to the parties for whom and for whose benefit such action has been brought. In order to assess the quantum of damages, the Court has to determine the pecuniary loss resulting from the death to the parties beneficially entitled. Only such damages can be given as can be shown to have been financially suffered by those, who bring the action, that is, the loss of pecuniary benefits which the plaintiffs would have got from the deceased if the latter had not died. In estimating such loss, the age of the deceased, his expectations of life, the consideration of his health, his habits and other matters which go to show his earning capacity, have to be considered. The reasonable expectations of pecuniary advantage by the deceased remaining alive may be taken into account and damages given in respect of that expectation. The Court should not grant sympathetic damages or damages by way of *solatium* for the loss. Assessment of damages in a case under this Act must necessarily be rough and approximate, and the investigation be more or less a guess work, for it is impossible to accurately estimate the loss which has been sustained by the death of a husband, wife, parent or child.

(2) That in order to succeed, it is not necessary for the plaintiffs to prove that the deceased was actually earning some income, the whole or a part of which was spent towards the maintenance or support of his parents. There has not to be specific evidence of pecuniary advantage actually derived from the deceased prior to his death. Under this Act, even prospective loss can be taken into account. Parents can legitimately recover for the loss of the probability that their son would some day earn and contribute towards their maintenance. It cannot be disputed that even when the deceased was only 12 or 14 years of age, he would be of some assistance to his parents in their day-to-day life and the parents could legitimately hope that when he comes of age and starts earning he would be of some financial help to them in their old age. Under the Act the money value of such an assistance has to be assessed which in the very nature of things has to be rough and approximate, because it involves guess work and it is not possible

to accurately assess it. No hard and fast rule can be laid down for making such an assessment. It has to depend upon the facts and circumstances of each case.

Held, (per Tek Chand, J.)—

(1) That the law lays stress on the pecuniary character of the loss in contradistinction to the injured feeling. The Fatal Accidents Act does not take into account any recompense by way of *solatium.* Law does not take into consideration damages either as a soothing to the affections or wounded feelings, or as a *quid pro quo* for the loss of the comfort and pleasure, derived from the society of the deceased by the members of the family. The law cannot and does not undertake to heal the wounds of grief. It cannot estimate in money, the value of the loss of the counsel, comfort and protection of a husband or a parent. Far less can the Courts assess, in terms of money, the worth of the bliss and pleasureable experience felt by the parents in the presence of their child, of whose society, they have been deprived, by reason of the fatal accident. The loss of happiness on account of the death of a child or spouse or parent is not measureable in money. The Fatal Accidents Act does not recognise mental pain, anguish, suffering, or bereavment of the surviving relatives as an element in determining damages. The difficulty which already exists in estimating the pecuniary loss occasioned by the death will be infinitely increased, if the mental suffering had to be taken into account in determining compensation.

(2) That the question of determining the quantum of damages has always been a baffling one. The elements which go to make up the value of a life to the designated beneficiaries, are matters, which cannot be reduced to an exact, or uniform rule, as the damages depend upon the particular facts and circumstances of each case. The evaluation in such matters, defies precise mathematical calculation. Despite the difficulties that confront a Court in arriving at calculations, all speculative considerations have to be avoided. Computing the amount of life expectancy not only of the deceased, but also, of the beneficiary, is an important factor, and in estimating the loss, the prospective earnings of the deceased are matters, which the Courts should take into consideration. The recovery of damages on this account is not confined to losses already incurred, but also prospective losses to be suffered by the beneficiaries,

on account of the wrongful death. There are a large number of matters, which have to be taken into consideration, in estimating the probable earnings, or the likely benefits, accruing to the beneficiaries, of which, they have been deprived. They are age, health, ability, prospects of advancement, the habits and the expenditure of the deceased, with regard to most of these matters, the Courts cannot always arrive at a definite conclusion. It goes without saying that the beneficiaries under no circumstances are entitled to the prospective earnings of the deceased in their entirety, but only to that portion of the earnings, which they were expected to receive from the deceased. The matter gets still more complicated, when estimate has to be made of the expected earnings of a person, who dies while still a child. In estimating the parents' pecuniary losses, account has also to be taken of the expenses which are to be incurred by them for the child's support. Even if the child has not earned any thing in the past, the parents cannot be deprived of damages on the ground of the uncertainty of his earning capacity. In making an assessment as to the likely loss of contributions from the child, the child's earning capacity, or a reasonable expectation of it, industry, and inclination to help his parents, as also, the health, life expectancy and the circumstances of the parents, deserve consideration. No less important, in the estimation of value of assistance, which a deceased child might have rendered had death not intervened, are the age, sex, physical and mental condition of the child, not forgetting of course the position in life, occupation and the state of health of the parents. The answer has to be found to the question, as to what a child in the same condition and station in life, and of like capabilities, is ordinarily worth, without regard to any special value which the parents might be attaching to its services.

(3) That it is not necessary that the deceased should have been actually earning money at the death provided there is a reasonable expectation of such earning in the future on account of which financial benefit may accrue to the deceased. In no case the life span of the deceased, his earning capacity, or his willingness to help his dependents, can be anticipated. Every reasonable expectation rests on certain countigencies which cannot be clearly foreseen, or accurately foretold. The law while considering the award of damages, looks to reasonable expectations and not to

positive or even practical certainties. There does not seem to be any justification for substituting "practical certainties" for "reasonable expectations".

Secretary of State for India in Council v. *Gopal Singh* (1) dissented from.

Case law discussed.

Regular First Appeal from the decree of the Court of Shri Radha Kishan Baweja, Subordinate Judge, 1st Class, Amritsar, dated the 3rd day of July, 1954, dismissing the plaintiffs suit and leaving the parties to bear their own costs and further ordering that as the suit was filed in forma pauperis, *the Court fee would be recovered from them (Plaintiffs) by the Collector and a copy of the decree sheet be sent to him for realization of Court fee.*

BHAGIRATH DASS, ADVOCATE, for the Appellant.

CHETAN DASS, DEPUTY ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

PANDIT, J.—This appeal filed *in forma pauperis* arises out of a suit which was also filed *in forma pauperis*, for the recovery of Rs. 25,000, as damages. It is alleged by the plaintiffs, who are husband and wife, that they had a son Shiv Raj Kumar by name who died on the 8th of June, 1952. He was a student of the primary class and was of eleven or twelve years of age and of good physique at the time of his death. On the 8th of June, 1952, at about 9 a.m. he went to Rajbaha Ibban (a canal distributory) which is at a distance of two and a half furlongs from Tarn Taran Railway Station near Amritsar. At that place a live electric wire was hanging down on the footpath of the said Rajbaha towards the side of Upper Bari Doab Canal and as soon as the said Shiv Raj Kumar

Pandit, J.

(1) 112 P.R. 1913.

Hira Lal and another v. State of Punjab

Pandit, J.

passed by that wire it touched his body which resulted in his instantaneous death at the spot. It is further alleged that the upkeep of these electric wires is the duty of the Punjab Hydro-Electric Department which was duty bound to take proper care of the electric installation and to see that the electric wires were in order. The death of Shri Shiv Raj Kumar was due to the gross negligence and carelessness of the said Hydro-Electric Department of the defendant—the State of Punjab. It was alleged that if proper care and caution had been observed by the Department, the boy would not have died.

The suit is brought under the provisions of the Fatal Accidents Act No. XIII of 1885, and it is claimed that the plaintiffs' who are the father and the mother of the unfortunate boy, are his only beneficiaries and are entitled to maintain the suit which is brought for their benefit. It is further alleged that this boy's life was cut off in the prime of his youth because in the natural course of events he would have lived up to a normal age of 55 or 60 years and after acquiring education would have attained a good place in life, that the deceased was the mainstay of the plaintiffs who were in their old age and would have benefited if their son had not died, that the deceased in the usual course of events would have earned a sum of Rs. 25,000 of which sum the plaintiffs have been deprived due to the boy's death having been caused by the gross negligence and carelessness of the defendant and its servants, and that proper notices had been sent to the defendant who took no action thereon.

The suit was resisted by the defendant who pleaded that the Department was neither negligent nor careless in the discharge of its duty, that

the electric wires were in order, that no live electric wire was lying on the foot-path of the Rajbaha, that it appears that the deceased had thrown a piece of steel wire on the electric line resulting in the short circuit between the top phase and the 'D' strap of the same phase to the point of breakage, causing the blowing off the top phase and breaking of the top conductor which while falling on the ground appears to have brushed along the second or third phase conductor and to have struck the boy sim ultaneously, thus bringing about the boy's death, that the deceased was not authorised nor within his rights to have gone to the place where he was found dead as that place was prohibited to the public, that the deceased had no business to meddle with the electric installation or any part thereof, that the deceased brought about his own death, that according to the medical report the boy was fourteen years of age and not eleven or twelve years as alleged by the plaintiffs, that the plaintiffs had not stated what loss they had suffered by the death of the boy nor had they stated any basis for damages, that there had not been any neglect or wrongful act on behalf of the employees of the Electric Department, that there had not been any valid and legal notice, and that the plaintiff had no *locus standi* to bring the suit.

The pleadings of the parties gave rise to the following issues :—

(1) Did Shiv Raj Kumar, the son of the plaintiffs, die on account of live electric wire hanging down on the foot-path of Rajbaha Ibban, near Burji No. 13, of Tarn Taran Railway line on the 8th of June, 1952, and was it due to the gross neglect and carelessness of the Punjab Hydro-Electric Department ?

Hira Lal and another
v.
State of Punjab

Pandit, J.

(2) If issue No. 1 is proved in favour of the plaintiffs, to what damages, if any, are they entitled ?

(3) Whether the State of Punjab is not liable for the gross neglect and carelessness of ias employees ?

(4) Whether notice under section 80, Civil Procedure Code, has been served on the defendant, if not, its effect on the suit ?

The trial Court dismissed the suit holding that Shiv Raj Kumar died on account of the live electric wire hanging down on the foot-path of Rajbaha Ibban near Burji No. 13, of Tarn Taran Railway line on the 8th of June, 1952, and it was due to the gross negligence and carelessness of the Punjab Hydro-Electric Department, that the State of Punjab was liable for the gross neglect and carelessness of its employees, that a valid notice under section 80, Civil Procedure Code, had been served on the defendant, and that the plaintiffs were not entitled to any damages because there was no past pecuniary advantage to the plaintiffs and the deceased was a boy of about twelve years of age, studying in the fifth primary class and there were no reasonable expectation of pecuniary advantage if he had remained alive.

The plaintiffs have come in appeal against the decree of the trial Court. The main point for decision in this case is the one covered by issue No. 2 as the findings of the trial Court on issues Nos. 1, 3 and 4 are not being challenged by the counsel for the State before us.

It having been proved that Shiv Raj Kumar died on account of a live electric wire hanging

down on the foot-path of Rajbaha Ibban, and it was due to the gross neglect and carelessness of the Punjab Hydro-Electric Department, question arises as to what damages, if any, are his parents, who are plaintiffs in this case, entitled ?

The facts proved in this case are that the deceased on the date of his death was, according to the plaintiffs, 11 or 12 years of age, though, according to the defendants, he was 14 years old. He was studying in the fifth primary class. He had good physique and according to his teacher, he was a mediocre student. His father was once Mukhtar of Messrs Phaggu Mal-Sant Ram, a firm of Amritsar, and later on, he became a clerk of an advocate there. The plaintiffs are poor people and were allowed to file the suit as also the present appeal *in forma pauperis*. They have three other sons, aged 28, 24 and 20 years but they are all separate from them. The action has been brought under section 1-A of the Fatal Accidents Act, No. 13 of 1855, which runs as under :—

> "Whenever the death of a person shall be caused by wrongful act, neglect or default and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.
>
> Every such action or suit shall be for benefit of the wife, husband, parent and child, if any, of the person whose death shall

Hira Lal and another
v.
State of Punjab

Pandit, J.

have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased ;

and in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct."

Under this Act the Court has been given a discretion to allow such damages as it thinks proportionate to the loss resulting from such death, to the parties for whom and for whose benefit such action has been brought. The principles governing the assessment of such damages have been discussed in a number of authorities. The Court has to determine the pecuniary loss resulting from the death, to the parties beneficially entitled. Only such damages can be given as can be shown to have been financially suffered by those who bring the action, that is to say, the loss of pecuniary benefits which the plaintiffs would have got from the deceased if the latter had not died. In estimating such loss, the age of the deceased, his expectations of life, the consideration of his health, his habits and other matters which go to show his earning capacity, have to be considered. The reasonable expectations of pecuniary advantage by the deceased remaining alive may be taken into

account and damages given in respect of that expectation. The Court should not grant sympathetic damages or damages by way of *solatium* for the loss. Assessment of damages in a case under this Act must necessarily be rough and approximate, and the investigation be more or less a guess work, for it is impossible to accurately estimate the loss which has been sustained by the death of a husband, wife, parent or child.

The trial Court was of the view that there must be proof of pecuniary benefit received by the plaintiffs in the past from the deceased and reliance for this proposition was placed upon a case in *the Secretary of State for India in Council* v. *Gopal Singh* (1), which, according to the Court below, was the leading case on this point. It was held in that case that the question was one of reasonable expectation of pecuniary benefit by the continued life of the deceased and such expectation must be largely founded on proof of pecuniary benefit received in the past, and that at any rate there must be something more than mere speculation. With very great respect to the learned Judges who decided that case, I am unable to persuade myself to subscribe to the view that there must be proof of some pecuniary benefit received in the past from the deceased, before the plaintiffs can successfully bring an action under this Act.

Charlesworth in his well-known book on Negligence, Third edition, at page 559, states:—

> "It is not necessary that the deceased should have been actually earning wages at the death, if there is a reasonable expectation that wages will be earned in the future, with the result that financial benefit will accrue to the dependants.*

(1) 112 P.R. 1913.

Hira Lal and another v. State of Punjab

Pandit, J.

* * 'The fact of past contribution may be important in strengthening the probability of future pecuniary advantage but it cannot be a condition precedent to the existence of such a probability.'."

The Indian Fatal Accidents Act, No. 13 of 1855, is almost similar to the Fatal Accidents Act, 1846 (9 and 10 Vict. c 93) of England, commonly known as Lord Campbell's Act.

In *Taff Vale Railway Company* v. *Jankins* (1), it was held as under :—

> "It is not a condition precedent to the maintenance of an action under the Fatal Accidents Act, 1846, that the deceased should have been actually earning money or money's worth or contributing to the support of the plaintiff at or before the date of the death, provided that the plaintiff had a reasonable expectation of pecuniary benefit from the continuance of the life."

In this authority, Viscount Haldane, L.C., observed—

> "* * * The basis is not what has been called solatium, that is to say, damages given for injured feelings or on the ground of sentiment, but damages based on compensation for a pecuniary loss. But then loss may be prospective, and it is quite clear that prospective loss may be taken into account. It has been said that this is

(1) L.R. 1913 A.C. 1.

qualified by the proposition that the child must be shewn to have been earning something before any damages can be assessed. I know of no foundation in principle for that proposition either in the statute or in any doctrine of law which is applicable; nor do I think it is really established by the authorities when you examine them."

In the same authority Lord Atkinson remarked at page 7—

"It is quite true that the existence of this expectation is an inference of fact—there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first, that the deceased earned money in the past, and second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can I think be drawn from circumstances other than and different from them."

Lord Shaw of Dunfermline in this very ruling specifically disagreed with the following observations of Lord Morris, C.J., in *Holleran* v. *Bagnell* (1)—

"* * *and there should be distinct evidence of pecuniary advantage in existence, prior to or at the time of the death."

(1) 6 L.R. Ir. 333.

Hira Lal and another
v.
State of Punjab

Pandit, J.

In my opinion, in order to succeed, it was not necessary for the plaintiffs to prove that the deceased was actually earning some income, the whole or a part of which was spent towards the maintenance or support of his parents. There has not to be specific evidence of pecuniary advantage actually derived from the deceased prior to his death. Under this Act, even prospective loss can be taken into account. Parents can legitimately recover for the loss of the probability that their son would some day earn and contribute towards their maintenance. It cannot be disputed that even when the deceased was only 12 or 14 years of age, he would be of some assistance to his parents in their day-to-day life and the parents could legitimately hope that when he comes of age and starts earning he would be of some financial help to them in their old age. Under the Act the money value of such an assistance has to be assessed which in the very nature of things has to be rough and approximate, because it involves guess work and it is not possible to accurately assess it. No hard and fast rule can be laid down for making such an assessment. It has to depend upon the facts and circumstances of each case.

In *Narayan Jetha* v. *The Municipal Commissioner and the Municipal Corporation of Bombay* (1), the facts were that the plaintiff's unmarried daughter, a child between 5 and 6 years of age, fell into an open manhole of a sewer in a lane in Bombay and met with her death. The sewer was vested in the Municipality of Bombay and was under the control of the Municipal Commissioner. Her mother brought a suit for damages under the Fatal Accidents Act, No. 13 of 1855. It was observed by the Division Bench of the Bombay High Court—

> "that, as regards damages, in cases of this nature, distinct evidence of the loss

(1) I.L.R. 16 Bom. 254.

sustained or benefit expected is not necessary. The jury may look at all the circumstances of the case and especially at the position of the parents and age of the child, and call in aid their own experience in arriving at their conclusions."

In *Berry* v. *Humm and Co.* (1), it was held as under :—

"* *under the Fatal Accidents Act, 1846 (Lord Campbell's Act), the damages recoverable in such an action are not limited to the value of money lost, or the money value of things lost, but include the monetary loss incurred by replacing services rendered gratuitously by the deceased where there was a reasonable prospect of their being rendered freely in the future but for the death, and, therefore, that the plaintiff was entitled to recover the damages assessed by the jury."

Prospective pecuniary advantage which is lost by reason of the fatal injury caused to the person in respect of whose death the suit is filed has to be taken into consideration in assessing the damages under the Act. In *Nani Bala Sen* v. *Auckland Jute Co. Ltd.* (2), Page, J., remarked as under :—

"The Court ought not to give sympathetic damages, or damages by way of consolation. In estimating the amount of the decree the Court must take into account all the circumstances which are material for considering the pecuniary loss

(1) (1915) 1 K.B.D 627,
(2) A.I.R. 1925 Cal. 893.

Hira Lal and another v. State of Punjab

Pandit, J.

which has been sustained. The Court must view the matter broadly. It must take into account the chances of life, chances of any improved conditions in which the family of the deceased might have passed their days, it must take into account the standard of living of the family which was dependant upon the deceased, and having regard to all the material circumstances, it must do the best it can to estimate what is a fair and reasonable sum to be awarded."

Reliance was placed by the learned counsel for the respondent on *Barnett* v. *Cohen and others* (1), where it was held that in an action under the Lord Campbell's Act it was not sufficient for the plaintiff to prove that he had lost by the death of the deceased a mere speculative possibility of pecuniary benefit; in order to succeed it is necessary for him to show that he has lost a reasonable probability of pecuniary advantage. McCardie, J., held on the facts of that case that the plaintiff, whose child under four years old had met with an accident, had not satisfied him that he had a reasonable expectation of pecuniary benefit and in the opinion of the learned Judge the plaintiff had not proved damage either actual or prospective.

In the present case the plaintiffs had a reasonable probability of pecuniary advantage from their deceased son who was between 12 and 14 years of age and was reading in the fifth primary class and who would have in another few years become an earning member of the family.

(1) (1921) 2 K.B.D. 461.

A Division Bench of the Nagpur High Court in *Mt. Manjulagoari* v. *Gowardhandas Harjiwandas Raval* (1), held as under:—

> "To be precise in assessing damages under the Act proportionate to the loss resulting to the claimants is by no means easy. While speculation is to be avoided, an estimate of damages has to be made. When one is making an estimate, one cannot be dogmatic. The Court has to arrive at fair figures after giving due consideration to all the material factors. The result reached may at best be described as a *quasi* scientific guess."

Applying the principles mentioned above and taking into consideration all the relevant circumstances and facts of this case, I am of the view that the plaintiffs are entitled to a decree for Rs. 2,500, for damages which they have suffered by the death of their son Shiv Raj Kumar. I have calculated this amount as under :—

Taking the age of the deceased to be between 12 and 14 years on the date of his death, I think he would have become an earning member of the family in about five or six years when he would have attained the age of 18 years. At a modest estimate, he would have started earning about Rs. 70 a month, out of which he would have spared about Rs. 25 per month for his parents. The age of the father, we were told by the counsel for the parties, was about 55 years on the date of the accident and the age of the mother was a little less than that. The parents would have, therefore, derived this pecuniary benefit for about ten years.

(1) A.I.R. 1956 Nagpur 86.

Hira Lal and another v. State of Punjab

Pandit, J.

I am not oblivious of the fact that during this period of ten years he might have married and thus added to his own expenses. But at the same time an expectation of a reasonable rise in his emoluments cannot be lost sight of. It is, therefore, not necessary to vary the expected contribution to his parents, because of a likely increase in his expenses or in his income. In the circumstances, a possible rise in his financial liabilities by reason of his obligations to his own family can be fairly equated with a corresponding increase in his income. Allowance has also to be made for the expenses which his parents would have to incur towards his education and maintenance, before he could become an earning member of the family. But during this period the boy also would have been rendering services; which have a monetary value, to his parents at home. It will, therefore, be reasonable to equate these two items on the debit and the credit side.

For reasons stated above, I think that the plaintiffs in this case would have continued to derive benefit from the earnings of their son at the rate of Rs. 25 per mensem for a period of at least ten years and would have, therefore, benefited to the extent of Rs. 3,000. As under the decree of this Court, the plaintiffs would be entitled to the decretal amount in a lump sum, whereas they would have received the sum mentioned above in a period spread over ten years, it would be reasonable to grant a decree for Rs. 2,500 to both the plaintiffs to be apportioned equally between them.

In the result, the appeal succeeds and the decree of the trial Court is set aside and the plaintiffs' suit decreed for Rs. 2,500 with costs. The Court-fee, payable by the plaintiff in the trial

Hira Lal and another v. State of Punjab

Tek Chand, J.

Court as well as in this Court, shall be paid by the defendant.

TEK CHAND, J.—This is a plaintiffs' appeal from the judgment of the trial Court dismissing their suit under Indian Fatal Accidents Act, 1855 (XIII of 1855). The plaintiffs who are husband and wife had brought a suit *in forma pauperis* for the recovery of Rs. 25,000 from the State of Punjab as damages on account of the fatal accident to their minor son Shivraj Kumar consequent upon the gross negligence of the defendant's servants.

On the 8th of June, 1952, Shivraj Kumar, deceased died in consequences of an electric shock received when he was walking along the canal bank (Rajbah Ibban) on the outskirts of Amritsar town near Burji No. 13. At that place there was a live electric wire lying across the foot-path suspended from the electric pole. On coming into contact with the live wire Shivraj Kumar died instantaneously. The electric wires are maintained by the Punjab Hydro-Electric Department of Punjab Government, and it is alleged, that a loose live wire was left lying on the road, through the gross negligence of the defendant's servants. If the persons whose duty it was to attend to the wire had noticed the broken electric wire lying on the bank of the distributary, the fatal accident would have been averted, and the boy would not have met his end. It is pleaded in the plaint that the boy was aged eleven or twelve years, of good physique and was studying in the 5th class in D. A. V. School, Lohgarh branch, Amritsar. The plaintiffs pleaded, that in the natural course of events, the boy would have lived a normal age of fifty or sixty years and after acquiring education would have attained a good place in life, and they would have been benefited by their son's earnings

Hira Lal and another
v.
State of Punjab

Tek Chand, J.

tiffs would have been benefited to the extent of in their old age. It was estimated that the plain- Rs. 25,000 if the deceased had not been fatally injured. The statutory notices were sent on 19th May, 1953, under section 80, Civil Procedure Code, to the Collector, Amritsar, the Secretary, Punjab State, Simla, and the Executive Engineer, P.W.D., Hydro-Electric Branch, Verka Road, Amritsar and they were received by the respective addresses on the 20th May, 1953.

The above allegations have been traversed by the defendant in the written statement; and the charge of negligence and carelessness in the discharge of the duties, by the employees of the defendant has been denied. It was also alleged that the deceased was not within his rights, when he went to the place where he met with the fatal accident, as entry was prohibited to the public. It was also suggested in the written statement, that the deceased had thrown a piece of steel wire on the electric line resulting in a short circuit and thus he himself brought about his own death. It was denied that the plaintiffs had in any way suffered on account of the death of their son so as to be entitled to damages. The trial Court framed the following issues :—

(1) Did Shivraj Kumar, the son of the plaintiffs, die on account of live electric wire hanging down on the foot-path of Rajbah Ibban near Burji No. 13 of Tarn Taran Railway Line on 8th June, 1952, and was it due to the gross neglect and carelessness of the Punjab Hydro-electric Department ?

(2) If issue No. 1 is proved in favour of the plaintiffs, to what damages, if any, are they entitled ?

(3) Whether the State of Punjab is not liable for the gross, neglect and carelessness of its employees ?

(4) Whether notice under section 80, Civil Procedure Code, has been served on the defendant, if not, its effect on the suit ?

On the first issue it was held that Shivraj Kumar died on 8th June, 1952, on account of contact with the live wire which was hanging, down the foot-path of the Ibban distributary near Burji No. 13. The electric wire had got damaged some time before 6 a.m., and the Lineman or his assistant, whose duty it was to patrol the electric line, never cared to look at the live wire. It was also found, that no evidence had been led on behalf of the defendant to show, that people were prohibited from walking on the banks of the distributary and there was no notice of prohibition fixed on the canal bank showing that entry on the bank was prohibited to the public. The first issue was, therefore, decided in plaintiffs' favour.

The second issue was decided against the plaintiffs on the ground that at the time of his death, the plaintiffs' son was not giving any pecuniary help to them, nor had they received any benefit from him in the past. The expectations of pecuniary help in future, were founded on hopes, which might never have been fulfilled. Reliance was placed upon a judgment of Punjab Chief Court in *Secretary of State in Council* v. *Gopal Singh*, (1). Certain other decisions were examined but not held applicable to the facts of this case. Consequently the second issue was decided against the plaintiffs.

(1) 112 P.R. 1913.

Hira Lal and another
v.
State of Punjab

Tek Chand, J.

The third issue which dealt with gross negligence and carelessness of the employees of the Punjab Government was not pressed on behalf of the defendant. Negligence was found to have been proved and that issue was decided against the defendant.

On the fourth issue it was held that the notices under section 80, Civil Procedure Code, had been duly served upon the defendant by the plaintiffs. In view of trial Court's findings on the second issue, the plaintiff's suit was dismissed.

In this appeal controversy has been confined to two points, namely, as to the right of the plaintiffs to claim damages and as to its quantum. Negligence on the part of the defendant's servants resulting in the death of Shivraj Kumar is not denied and the plaintiff's version as to the manner in which the boy met his end has not been questioned. As to the age of Shivraj Kumar his father Hira Lal, Plaintiff No. 1, stated that at the time of Shivraj Kumar's death, he was $11\frac{1}{2}$ years and was studying in fifth class and was a handsome boy. P. W. 4 Amar Nath a teacher of D. A. V. High School stated that Shivraj Kumar was a medicore student of a good physique and according to the school register he was born on 5th January, 1941. Dr. Chanan Singh Ahluwalia, P. W. 7, who performed the autopsy on 9th June, 1952, considered the age of the boy to be fourteen years.

The principles governing the right of the plaintiffs' to damages under the Indian Fatal Accidents Act, (XIII of 1855) may now be conisdered.

According to the common law doctrine of torts a personal right of action dies with the person *Actio personalis moritur cum persona.* Under this

rule, not only there was the extinction of liability for tort, by death, but also, no liability in tort, was created for having caused death. This rule exempted liability from personal action. This maxim has been found to be pregnant with mischief and has been eaten away by exceptions made by common law and also by statute, before statutory assault was made on this maxim. In the words of Lord Wright, "it was cheaper to kill than to maim or cripple," *Rose* v. *Ford* (1). The reason for this unjust rule was that no man had any legally protected interest in the life of another. The statute in England marked early departure from the rule, when the Fatal Accidents, Act, 1846, otherwise known as Lord Campbell's Act established the principles which are to be enforced in this case. The corresponding law in India, which, to all intents and purposes, is identical with the language employed in the English statute is embodied in the Fatal Accidents Act XIII of 1855.

Lord Campbell's Act had not preceded the Indian Act for more than a decade. The Indian Act was passed to provide compensation to families for loss occasioned by the death of a person caused by an actionable wrong. Section 1A is reproduced below :—

> "1A. Whenever the death of a person shall be caused by wrongful act, neglect or default and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for

(1) 1937 A.C. 826.

Hira Lal and another
v.
State of Punjab

Tek Chand, J.

damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased ;

and in every such action, the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct."

Lord Campbell's Act has also furnished a pattern for similar statutes in the United States of America and in Canada.

The right to recover damages for having wrongfully caused death being wholly statutory, the plaintiffs' case must stand or fall by the terms of the enactment.

The cause of action vests in the designated persons. The basic rule to which the English

statute and the Indian Act, subscribe, is, that the designated beneficiaries are entitled to compensation for a pecuniary or a material loss, resultant from the death of a person from whom there was a reasonable expectation of monetary benefit, assistance or support of which the claimant has been deprived by the death. It has to be a reasonable expectation not a mere speculative possibility. Pecuniary loss is either an actual financial benefit of which the plaintiff had in fact been deprived or what may reasonably have been expected in future. Legal liability alone is not the yardstick for granting damages. The reasonable expectation in view of the relationship between the deceased and the survivors forms equally a good foundation for such a claim and if such expectations have been disappointed, the law will grant damages. *Dalton* v. *S. E. Railway* (1). The pecuniary advantage need not be in the form of cash or goods, as service rendered by the deceased, will be deemed of equal value. Where house-keeping used to be done by wife, her husband was held to be entitled to damages, where her death was caused by the negligent act of the defendant on the consideration, that he would have to employ and pay for a housekeeper to render such service. In *Berry* v. *Humm and Co.* (2), of the report, Scrutton, J. said :—

> "I can see no reason in principle why such pecuniary loss should be limited to the value of money lost, or the money value of things lost, as contributions for food or clothing, and why I should be found to exclude the monetary loss incurred by replacing services rendered gratuitously by a relative, if there

(1) 114 R.R. 726 at P. 751.
(2) (1915) 1 K.B.D. 627 at P, 631,

Hira Lal and another
v.
State of Punjab

Tek Chand, J.

was a reasonable prospect of their being rendered freely in the future but for the death."

Again, it is not necessary that the deceased should have been actually earning money at the death, provided there is a reasonable expectation of such earning in the future on account of which financial benefit may accrue to the deceased. Lord Moulton in *Taff Vale Railway* v. *Jenkins,* (1), said :—

> "The fact of past contribution may be important in strengthening the probability of future pecuniary but it cannot be a condition precedent to the existence of such a probability."

In that case, the deceased, a girl of 16 years, was nearing the completion of her apprenticeship and would in all likelihood have started earning money in the near future.

In *Trubyfield* v. *Great Western Railway* Co. (2), a young girl of 8 years of age was killed in a street accident, and damages have been claimed in respect of her loss of expectation of life. It was held that though, in the case of a very young child, some reduction of damages must be made, having regard to children's ailments, yet, in the case of one who has outlived such dangers, there should be no such reduction on account of the infancy. The damages were assessed at £ 1,500.

In *Benham* v. *Gambling* (3), a boy of the age of two-and-a-half years was killed in a road accident.

(1) 1913 A.C. 1 at P. 10.
(2) (1937) 4 A.E.R. 614.
(3) 1941 A.E.R. 7 (H.L.):

The damages for loss of expectation of life were assessed at £ 1,200. The House of Lords thought that the proper assessment was £ 200 and the assessment of such damages is not to be made upon the actuarial basis.

In *Duckworth* v. *Johnson* (1), the plaintiff was a working mason and his son was a boy of 14 years of age who had earned 4s., a week for about a year or two, though at the time of his death he was unemployed. The Jury found that the father had sustained a pecuniary loss by the death of his son which was assessed on £ 20.

In an American Case *Rail Road Company* v. *Adams* (2), the law was stated thus :—

> "The rule is that, if there be a reasonable expectation of pecuniary advantage from a person bearing the family relations, the destruction of such expectation by negligence occasioning the death of the party from whom it arose, will sustain the action."

The law is stated thus in Halsbury's Laws, of England, Third Edition, Volume 28, pages 101 and 102 :—

> "The pecuniary loss is not limited to the value of money lost, or to the money value of benefits, lost, but includes the monetary loss incurred by replacing services rendered gratuitously by the deceased, if there was a reasonable prospect of their being rendered freely in the future but for the death of the

(1) (1859) 118 R.R. 667.
(2) 55 Penna 499.

Hira Lal and another
v.
State of Punjab

Tek Chand, J.

deceased. Pecuniary loss may be evidenced by proof of a reasonable expectation of some future pecuniary benefit, and it is not necessary that the claimant should have a legal right to such a benefit from the deceased or should have actually received before the death any benefit of the same nature.....

.....

So, also, account can be taken of a reasonable expectation of pecuniary benefit from services rendered or assistance given by the deceased even if he was a child, and even if such services or assistance had not actually commenced at the time of death."

There are, however, certain observations to the contrary of McCardie J. in *Barnett* v. *Cohen and others* (1). In that case a boy of under-four years of age, who used to live with his father, the plaintiff, was crushed to death as a result of the fall of a pole due to the negligent handling of the defendant's servants. The plaintiff who was an Engineer had an income of £ 1,000 a year. While giving judgment McCardie, J. said :—

"In the present action the plaintiff has not satisfied me that he had a reasonable expectation of pecuniary benefit. His child was under-four years old. The boy was subject to all the risks of illness, disease, accidents and death. His education an upkeep would have been a substantial burden to the plaintiff for many years if he had lived. He might or might not have turned out a useful

(1) (1921) 2 K.B. 461.

young man. He would have earned nothing till about sixteen years of age. He might never have aided his father at all. He might have proved a more expense. I cannot adequately speculate one way or the other. In any event he would scarcely have been expected to contribute to the father's income, for the plaintiff even now possesses £ 1,000 a year by his business and may increase it further, nor could the son have been expected to aid in domestic service. The whole matter is be set with doubts, contingencies, and uncertainties. Equally uncertain, too, is the life of the plaintiff himself in view of his poor health. He might or might not have survived his son."

This was a decision on its peculiar facts. The distinguishable features of the case were that the plaintiff in that case was the father of the deceased who was making £ 1,000 a year and the boy was below 4 years of age and was not expected to render any pecuniary service to his father who did not stand in need of any financial assistance from his son. The Judge also took into consideration the failing health of the father who might not have lived for many years, to see, that his son earned sufficient money in order to assist him.

We cannot lose sight of conditions in this country when applying principles followed by the Judges in England in the background of conditions prevailing there.

In this case, the plaintiffs are paupers, the age of the boy was 11½ years according to the father and 13 years according to the doctor who performed

Hira Lal and another *v.* State of Punjab

Tek Chand, J.

the post-mortem examination. There are greater expectations of financial assistance to poor parents from a boy of that age, in this country, as, the parents cannot afford to wait for a number of years, during which, the boy might have equipped himself for making a living. That decision based upon the circumstances and conditions of the plaintiff, in England, cannot be blindly received as a certain guide in a case like the present. The above observations of McCardie, J., cannot by any means, be treated as axiomatic governing cases in general as may arise under the Fatal Accidents Act in India. On the other hand, the case of *Bramal* v. *Leese* (1), is in point. The child who lost his life in a fatal accident was only 12 years old and was at the time of his death not earning anything but was a financial burden to his parents. Verdict was given for the plaintiff on the ground that in the course of a year or two he would have earned wages.

Law also lays stress on the pecuniary character of the loss in contradiction to the injured feeling. The Fatal Accidents Act does not take into account any recompense by way of *solatium*. Law does not take into consideration damages, either as a soothing to the affections or wounded feelings, or as a *quid pro quo* for the loss of the comfort and pleasure, derived from the society of the deceased by the members of the family. The law cannot and does not undertake to heal the wounds of grief. It cannot estimate in money, the value of the loss of the counsel, comfort and protection of a husband or a parent. Far less can the Courts assess in terms of money, the worth of the bliss and pleasurable experience felt by the parents in the presence of their child, of whose society, they have been deprived, by reason of the fatal accident. The

(1) 29 L.T. (O.S.) 111.

loss of happiness on account of the death of a child or spouse or parents is not measurable in money. The Fatal Accidents Act does not recognise mental pain, anguish, suffering, or bereavement of the surviving relatives as an element in determining damages. The difficulty which already exists in estimating the pecuniary loss occasioned by the death will be infinitely increased, if the mental suffering had to be taken into account in determining compensation. These principles are well settled and have received recognition in a large number of cases. In *Gillard* v. *Lancashire and Y. R. Co.* (1), Pollock C.B. while construing Lord Campbell's Act said:—

> "It is a pure question of pecuniary compensation, and nothing more, which is contemplated by the Act, no matter who or what the survivors may be. * *
> * * * * * *
> I think it is utterly impossible for a jury to estimate any sum as a compensation for the injured feelings of the survivors; all that is left which is appreciable after the death of the party killed is the pecuniary loss sustained by his family".

Lord Wright in the House of Lords in *Davies* v. *Powell Duffryn Associated Collieries, Ltd.*, (2) said:—

> "There is no question here of what may be called sentimental damage, bereavement or pain and suffering. It is a hard matter of pounds, shillings and pence, subject to the element of reasonable

(1) (1848) 12 L.T. 356.
(2) 1942 A.C., 701 (617).

Hira Lal and another
v.
State of Punjab

Tek Chand, J.

future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt."

In a later case from British Columbia where the Columbia legislation had reproduced, as was said, with inconspicuous differences, the Fatal Acts in force in the United Kingdom, the Judicial Committee, followed the principles laid down in the above case by the House of Lords,—vide *Nance* v. *British Columbia Electric Railway Company, Ltd.* (1). Reference may also be made to *Blake* v. *Midland Railway Company* (2), *Royal Trust Company* v. *Canadian Passific Railway Company* (3), *Pym* v. *Great Northern Railway Company* (4), and *Franklin.* v. *S. E. Railway* (5). The question of determining the quantum of damage has always been a baffling one. The elements which go to make up the value of a life to the designated beneficiaries, are matters, which cannot be reduced to an exact, or uniform rule, as the damages depend

(1) 1951 A.C 601 at Pages 614 to 617.
(2) 118 E.R. 35.
(3) (1922) 38 T.L.R. 899.
(4) 128 E.R. 508.
(5) 157 E.R. 448.

upon the particular facts and circumstances of each case. The evaluation in such matters, defies precise mathematical calculation. Despite the difficulties that confront a Court in arriving at calculations, all speculative considerations have to be avoided. Computing the amount of life expectancy not only of the deceased, but also, of the beneficiary, is an important factor, and in estimating the loss, the prospective earnings of the deceased are matters, which the Courts should take into consideration. The recovery of damages on this account, is not confined to losses already incurred, but also prospective losses to be suffered by the beneficiaries, on account of the wrongful death. There are, a large number of matters, which have to be taken into consideration, in estimating the probable earnings, or the likely benefits, accruing to the beneficiaries, of which, they have been deprived. They are age, health, ability, prospects of advancement, the habits and the expenditure of the deceased. With regard to most of these matters, the Courts cannot always arrive at a definite conclusion. It goes without saying that the beneficiaries under no circumstances are entitled to the prospective earnings of the deceased in their entirety, but only to that portion of the earnings, which they were expected to receive from the deceased. The matter gets still more complicated, when estimate has to be made of the expected earnings of a person who died while still a child. In estimating the parents' pecuniary losses, account has also to be taken of the expenses which are to be incurred by them for the child's support. Even if the child has not earned anything in the past, the parents cannot be deprived of damages on the ground of the uncertainty of his earning capacity. In making an assessment as to the likely loss of contributions from the child, the child's health,

Hira Lal and another v. State of Punjab

Tek Chand, J.

earning capacity, or a reasonable expectation of it, industry, and inclination to help his parents, as also, the health, life expectancy and the circumstances of the parents, deserve consideration. No less important, in the estimation of value of assistance, which a deceased child might have rendered had death not intervened, are the age, sex, physical and mental condition of the child, not forgetting of course the position in life, occupation and the state of health of the parents. The answer has to be found to the question, as to what a child in the same condition and station in life, and of like capabilities, is ordinarily worth, without regard to any special value which the parents might be attaching to its services.

In a case of this kind as we have before us, assessment of damages must necessarily be only rough and approximate. In *Chudasama Manabhai Madarsang and others* v. *Mahant Ishwargar Budhagar* (1), decided in 1891, damages were allowed to the plaintiff whose daughter, child between 5 and 6 years, was killed by falling into an open man-hole of a sewer in a lane in Bombay, and it was held, that in such a case, the Jury, should look at all the circumstances of the case, and the position in life of the parents, and the age of the child, while assessing damages; and call in aid, their own experience in arriving at their conclusions.

In *Rose* v. *Ford* (2), Lord Wright in the course of a speech in the House of Lords said.—

> "The jury should be directed that they are entitled to take it into consideration along with other relevant elements of

(1) I.L.R. 16 Bom. 254.
(2) (1937) 3 A.E.R. 359 at page 373.

damage, using their common sense to give what is fair and moderate, in view of all the uncertainties and contingencies of human life. Special cases may occur, such as that of an infant, or an imbecile, or an incurable invalid, or a person involved in hopeless difficulties. The judge or jury must do the best they can, in the circumstances, in this as in other cases."

The principles noticed above have been recognised by the Courts in India and reference may be made to *Goolbai Motabhai Shroff and others* v. *Pestonji Cowasji Bhandari* (1), *Palghat Coimbatore Transport Co., Ltd., by liquidator N. Krishnanswami Naidu* v. *Narayanan and others* (2), *Sm. Jeet Kumari Poddar and others* v. *Chittagong Engineering and Electric Supply Co., Ltd., and another* (3), *Sardar Nand Singh and another* v. *Abhyabala Debi and others* (4), *Mt. Manjulagoari and others* v. *Gowardhandas Harjiwandas Raval and others* (5), *Municipal Committee, Delhi* v. *Sobhag Wanti, etc.* (6).

In *Devi Singh* v. *Mangathayammal* (7), where a boy, aged 13, was killed by the negligent act of an omnibus driver, damages were allowed to the parents for loss suffered and also the expectation of prospective pecuniary conditions was taken into consideration.

The only other decision which remains to be noticed is *Secretary of State for India in Council* v. *Gopal Singh* (8), in which a boy of 17 years

(1) A.I.R. 1935 Bom. 333.
(2) A.I.R. 1939 Mad. 261.
(3) A.I.R. 1947 Cal. 195 (200).
(4) A.I.R. 1955 Asam 157 (158).
(5) A.I.R. 1956 Nag. 86.
(6) (1960) 62 P.L.R. 362.
(7) A.I.R. 1935 Mad. 322.
(8) 112 P.R. 1913.

Hira Lal and another v. State of Punjab

Tek Chand, J.

who was sitting on a cycle was killed in a railway accident which was the result of an admitted negligence on the part of the railway servants. On behalf of the respondents, reliance has been placed upon the following observations of Agnew, J., in the judgment :—

> "In the present case, as has been shown above the plaintiffs had not of course received any pecuniary benefit from their son in the past before his death. If they entertained any expectations of pecuniary help from him in the future these can only have been founded on hopes which might never have been fulfilled. If the boy had turned out well, if he had chosen to help, if he had been able to afford help, if he had obtained State employment, the expectation of the parents might have come to fruition. But we find no reason, patent from the record, why we should convert these contingencies into practical certainties, as the learned District Judge has done; and we are unable to hold that the plaintiffs had any reasonable expectation of pecuniary advantage from the remaining alive of the son, who lost his life in the Railway accident of December 1907, and the immediate result of the death was rather gain than loss of a pecuniary nature".

If the above reasoning were to hold good, then there will hardly be any case under the Fatal Accidents Act to which it cannot be applied, in order to non-suit the plaintiff. In no case the life span of the deceased, his earning capacity, or his

willingness to help his dependents, can be anticipated. Every reasonable expectation rests on certain contingencies, which cannot be clearly foreseen, or accurately foretold. The law while considering the award of damages, looks to reasonable expectations and not to positive or even practical certainties. There does not seem to be any justification for substituting "practical certainties" for "reasonable expectations" as was done in that case.

The reasoning of the trial Court for depriving the plaintiffs of their claim in suit, namely, that at the time of his death their son was not of any pecuniary advantage to his parents, and, that there were no reasonable expectations of any pecuniary advantage from the remaining alive of the son, is patently wrong and has not the support of law or logic.

I find myself in complete agreement with my learned brother that a decree for Rs. 2,500 with costs should be passed in favour of the plaintiffs and the decretal amount should be apportioned between them equally and that the court-fee payable by the plaintiffs shall be payable by the defendant.

K.S.K.

SUPREME COURT.

Before Bhuvaneshwar Prasad Sinha, C. J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ;

AMBA LAL,—*Appellant.*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Appeal No. 154 of 1956

Sea Customs Act (VIII of 1878) and Land Customs Act (XIX of 1924)—Offences under—Onus of proof—On whom lies—Sea Customs Act (VIII of 1878)—Section 178-A—Whether retrospective.